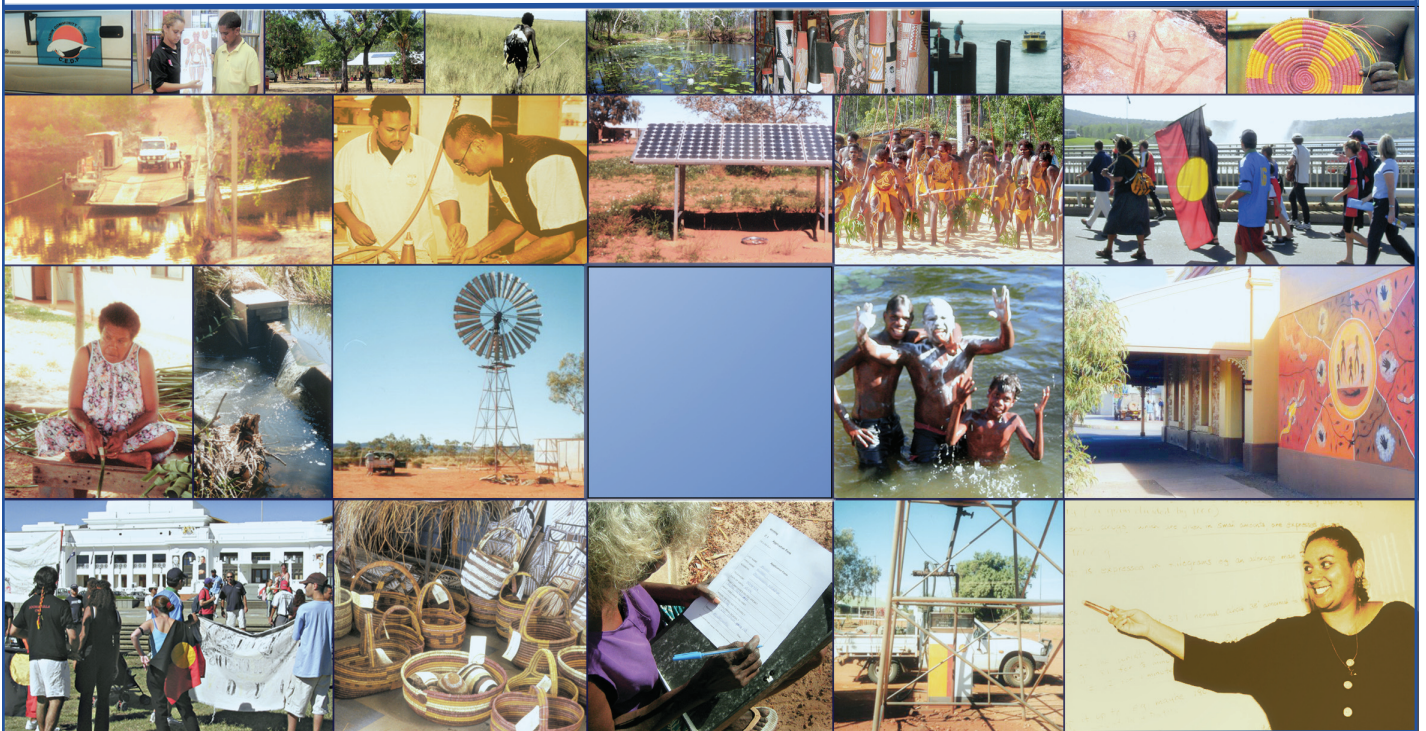


Income Management and the Rights of Indigenous Australians to Equity

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A version of this Topical Issue was provided as a submission to the Senate Standing Committee on Community Affairs Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009.¹

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The proposed welfare reforms under examination by this Senate Committee will fundamentally alter a citizenship rights-based approach to welfare, replacing it with one that is skewed towards a far higher level of state governmentality of citizen subjects. I would like to focus on a number of the specific questions raised by the Committee's [Statement of Reasons for Referral of the Bills](#)² as well as the 'bigger picture' [Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening of the Northern Territory Emergency Response](#)³ (henceforth the Policy Statement) released by the Australian Government in November 2009. I shall discuss the policy background, followed by specific comments on the issues identified by this Senate Standing Committee, some comments on the Policy Statement, and conclude with a series of recommendations and observations.

BACKGROUND

The need to introduce these welfare reforms has arisen from the Rudd Government's desire to retain income management (or quarantining) in the Northern Territory, but to make these laws compatible with the Commonwealth *Racial Discrimination Act*, what I have referred to in another context as the 'ultimate legal Houdini Act'.⁴

I have consistently opposed measures to quarantine the welfare incomes of people residing in prescribed communities since their proposal in June 2007 and their enactment in law in August and September 2007. I have done so for two reasons.

Firstly, there is no evidence that such measures generate positive benefits (an extensive research has been carried out in the United States in particular on this topic), especially given the high cost of establishing income management regimes and monitoring the spending of beneficiaries.

Secondly, these income management measures are discriminatory. While non-discretionary for Indigenous people, they have not to date been applied on a blanket basis to non-Indigenous Australians. It is assumed that all Indigenous parents who are welfare recipients are feckless spenders whose incomes must be quarantined and controlled. At the very least, on grounds of equity with the broader community, policy should assume that all Indigenous parents are good parents and allow welfare authorities the discretion to quarantine payments only if the opposite proves to be the case. (see [Opening comments to Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Provisions of the Northern Territory Emergency Response Bill 2007 and Associated Bills](#)).⁵

STATEMENT OF REASONS FOR REFERRAL OF THE BILLS

I agree with the Committee that the reforms to welfare policy proposed in these Bills are far reaching and if implemented, will potentially affect a large number of disadvantaged Australians. In its [Statement of Reasons for Referral of the Bills](#):

The Committee seeks an assessment of the effectiveness of the amendments proposed in the Bills to:

1. improve the social and economic conditions, social inclusion and life outcomes of all the disadvantaged individuals and communities affected by the measures, including but not limited to the Northern Territory;

There have been a number of attempts to assess the impact of income quarantining (or management). These include the NTER Review, the Australian Government's *Closing the Gap in the Northern Territory, January 2009 to June 2009 Whole of Government Monitoring Report*, and the Australian Institute of Health and Welfare's commissioned *Report on the Evaluation of Income Management in the Northern Territory*. However, there is *no* unequivocal evidence available that demonstrates positive outcomes. There is certainly evidence that the requirement of store licencing to implement income management has improved community access to a better range of food and other goods, as documented in the Parliamentary Report *Everybody's Business: Remote Aboriginal and Torres Strait Islander Stores* (November 2009). This is a positive outcome directly but coincidentally linked to income management.

2. deliver measurable improvements in protecting women and children, reducing alcohol-related harm, improving nutrition and food security, promoting community engagement and strengthening personal and cultural sense of value in all affected communities, including but not limited to Indigenous communities in the Northern Territory;

As above, there is no unequivocal evidence of improvements in any of these areas as a result of income management and hence some questions must be asked about its continuity. The *Closing the Gap in the Northern Territory, January 2009 to June 2009 Whole of Government Monitoring Report* is the first that provides some comparative statistics for before and after the Intervention, and while interpretation of these data is open to debate, there is again no clear evidence of improvements.⁶

3. reinstate the *Racial Discrimination Act 1975* [RDA] and deliver on our international commitments under the UN Convention on the Elimination of All Forms of Racial Discrimination in the operation of relevant legislation, particularly the *Northern Territory National Emergency Response Act 2007* [NTER].

The proposed amendments will in my view reinstate the RDA in a technical and legal manner by extending measures now targeting Aboriginal people in the Northern Territory only (and possibly in Cape York) to other Australians. However, in my view, until the law is amended and applied more broadly, Australia remains in breach of the RDA. I make recommendation to deal with this unacceptable situation below.

RDA:

Racial
Discrimination
Act 1975

NTER:

Northern
Territory National
Emergency
Response Act
2007

Assess the evidence that the proposed measures will deliver their stated policy objectives in an appropriate and cost effective manner.

This question is addressed briefly below in discussion of the Australian Government's Policy Statement.

Consider the relative merits of alternative measures in achieving these outcomes.

There are three broad alternatives available. First, is to default to have no income management, as is currently the case for almost all Australian welfare beneficiaries. The second is to have income management, but on an opt-in voluntary basis and with welfare recipients deciding on the proportion of their income to be managed, as is currently possible with Centrepay. The third is to proactively offer welfare recipients access to income management capacity building programs, like the Family Income Management Scheme (FIMS) that has been operating for some years now. It is difficult for me to assess the relative cost/benefits of these three options, but given that FIMS has historically been evaluated then evidence-based comparative data should be available to the Australian Government.

FIMS:

Family Income
Management
Scheme

Assess the likely direct and incidental costs of the proposed measures including:

1. the cost of administration and delivery of the measures;

The Commonwealth has committed to spending \$352 million over four years for the establishment and administration costs of income management (Basics Card) in the Northern Territory, which covers some 20,000 people. While the Commonwealth may generate some efficiency dividends from the application of income management to Indigenous people in prescribed communities as welfare reform 'greenfields', the sheer scale of the proposed expansion suggests that administration of proposed measures will be significant. As there is no evidence that the measures will generate better outcomes, there is no guarantee of offsets from improved health, education or employment status.

2. additional costs incurred by those subject to the measures;

The costs that will be incurred by those subjected to the measures can be conceptualized in two ways: tangible and intangible costs. Tangible costs would include the possibility that the cost of income management will be passed onto those subject to the measures, for example through higher prices in the limited number of stores licenced to operate Basics Cards. Intangible costs would include the loss of freedom to choose how to expend one's welfare income. It is surprising that the extent of tangible costs as outlined above have not been assessed to date.

3. the costs incurred by businesses complying with the Basics Card and potential losses of businesses excluded from the scheme.

This issue was addressed in part in the House of Representatives Aboriginal and Torres Strait Islander Affairs Committee's *Everybody's Business: Remote Aboriginal and Torres Strait Community Stores*, tabled in November 2009. Initially Basics Card compliance costs were met by the Australian Government, although whether this remains the case or is proposed to be the case with the extension of income management is not clear. It is certainly likely that any additional costs will be passed onto consumers, as occurs regularly with the banking sector and interest rate increases. Businesses excluded from any income management licencing system are likely to experience loss of turnover and reduced commercial viability. Arguably licencing is a form of regulation that is anti-competitive and has the capacity to create monopoly in situations that were previously competitive.

Assess the effectiveness of the amendments proposed in the Bill in meeting the Government's policy objectives to:

1. address the social and economic disengagement arising from long term welfare dependence in disadvantaged regions, and in particular across the whole of the Northern Territory;

This question is addressed briefly below in discussion of the Australian Government's Policy Statement.

2. improve the engagement, participation and responsibility of certain welfare recipients;

This question is addressed briefly below in discussion of the Australian Government's Policy Statement.

3. continue and strengthen the measures to protect women and children, including reduce alcohol-related harm, improve food security, ensure appropriately secure tenure for the delivery of government services, promote personal responsibility and rebuild community norms in Northern Territory Indigenous communities;

As noted above there is no unequivocal evidence of improvements in any of these areas as a result of income management and hence questions must be asked about its continuation.

4. reinstate the *Racial Discrimination Act 1975* in the operation of relevant legislation, particularly the *Northern Territory National Emergency Response Act 2007*.

As noted above, the proposed amendments could in my view reinstate the RDA in a technical and legal manner into the NTER.

SOME COMMENT ON THE POLICY STATEMENT

The Rudd Government's primary initiatives in Indigenous policy to date have been to set concrete targets to Close the Gap; to highlight the need for evidence-based policy making; and to commit substantial additional funding to Indigenous affairs over the next decade, via the COAG National Indigenous Reform Agreement and a series of National Partnership Agreements signed in 2009.

The legislative changes proposed in the Bills under discussion are a response to this broader policy agenda, as well as a more specific welfare reform agenda outlined in the Policy Statement.

As will become apparent, there are aspects of the Policy Statement—particularly in relation to the purported benefits of income management—that appear to me at best to be inconsistent and therefore poor policy making, and at worst to jeopardise prospects to improve the marginal status of Indigenous Australians. It is noteworthy that much of this inconsistency is reflected in the very structure of the Policy Statement. It has three sections, an Introduction (that discusses policy directions in the Northern Territory and elsewhere), a Part 1 that outlines the Government's future position on the NTER, and a Part 2 that reiterates the raft of budgetary measures taken by the Australian Government to Close the Gap in the Northern Territory. I will focus my comments only on elements of the Introduction (titled 'Policy Statement Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening of the Northern Territory Emergency Response') that focus on this Committee's Inquiry (pp. 1–2) and on Part 1 (titled 'Australian Government's Position on Future Directions for the Northern Territory Emergency Response') that relate to the RDA and Income Management (pp. 4–7). These are the government's policy objectives referred to by the Senate Standing Committee above.

The Policy Statement raises issues for debate because much of its focus is on the asserted negative impacts of welfare dependence without proper contextualisation of the structural determinants of disadvantage. Hence, while the COAG approach is purportedly whole-of-governments, we already see different policy statements focused on discrete policy areas; in this case welfare reform that will now include non-Indigenous

Australians. This strikes me as messy policy-making, neither Indigenous-specific nor truly mainstreaming. And it seems to me that throughout we see predetermined proposed policy solutions to problems that are highly diverse and only partially defined.

Two key questions arise. First, will these welfare reform measures assist to Close the Gap and if so where is the evidence base? And second, if there are some people who are assessed by some normative and transparent criteria to be irresponsible and in need of income management, is there any evidence that they are being targeted and more importantly assisted to modify their expenditure patterns?

Just three examples from the Policy Statement might clarify my concerns.

1. At p. 1 it is asserted that 'The Government's welfare reforms tackle the destructive, intergenerational cycle of passive welfare' supposedly by quarantining income to ensure that it is spent 'in the best interests of children'; and by allowing people exemptions from income management if they participate in education and training. But this language is just abstract assertion. There is nothing in the income management regime that requires expenditure on children, rather a requirement that a Basics Card is used to purchase a range of goods in licenced stores; and there is no cogent link that I am aware of between income management and participation in education and training, indeed the policy language here presents income quarantining as a punitive measure that might be lifted if welfare recipients take personal initiative not to manage their income responsibly but to participate in education or training.
2. At pp. 1–2 it is stated that the operations of the new income management scheme will be carefully evaluated to inform future national roll out to other severely disadvantaged regions. Late at p. 6 it is stated that '[i]mplementation in selected locations elsewhere in Australia will then proceed as informed by evidence developed from the Northern Territory experience'. But surely if the careful evaluations and evidence from the Northern Territory indicate negative outcomes there would be no further roll out but rather abolition of existing income management measures? Outcomes from the reforms are being predetermined. which makes a mockery of any notion of evidence-based policy making.
3. At p. 2 it is stated that '[a] central requirement is a heightened focus on respectful engagement with Indigenous people, and close community involvement in developing and managing long term solutions'. From my personal observations and readings it does not seem that the NTER redesign consultations were based on such respectful engagement in that the range of options provided did not include abolition of income management and did not seek community involvement in policy design.

The absence of any cogent argument for income management—let alone any evidence that it is making a difference—can be demonstrated from the following hypothetical example. If a person moves from welfare to employment their income is automatically exempt from income management. However, if they lose their employment and go back onto welfare their income is again managed. These changes would occur irrespective of the person's expenditure patterns when employed or unemployed. Exactly the same could be demonstrated with the income management of an employed and unemployed person: the employed person could expend income irresponsibly while the unemployed might expend income responsibly, and consequently income management would target the wrong person.

I see no evidence base provided to support the proposed welfare reforms that suggest that they constitute the right instruments to Close the Gap, nor that they are constructed in a manner that will target the right people for income management (if there was evidence that this made a difference).

RECOMMENDATIONS

1. All the available evidence—that collected by the NTER Review, government agencies and by AIHW on a consultancy basis for FaHCSIA, as well as international studies—provide far from unequivocal support for these measures. Prior to making such far-reaching welfare reforms, it is incumbent on the Australian Government to properly gather and analyse the evidence of the last two years to assess the impacts of income management.
2. While such evidence is being gathered and analysed in an impartial manner by an independent and reputable research body (national, or international if none that is suitably independent can be found in Australia) that does not pre-empt the outcome, social security income management should be made voluntary for all. To not do so, to continue to apply measures without discretion, is tantamount to preemptively judging social security recipients—the most vulnerable and powerless in our society—as guilty rather than being accorded the presumption and dignity of innocence until proven otherwise. To continue with the blanket measures status quo, as is happening in the NT, continues to flaunt the RDA. It is recommended that the Minister use her discretion to immediately unprescribe communities and allow for opt-in income management measures to proceed.
3. The Australian Government should focus its attention on the very challenging structural social policy measures, such as the provision of public services in housing, health and education to Aboriginal communities, that the Australian state, for a complex set of institutional and structural reasons, currently seems incapable of implementing. Instead policy attention is focused on the far-easier target of welfare-receiving individuals who can be technically governed via the Centrelink payments system.

CONCLUDING OBSERVATIONS FOR THE COMMITTEE'S CONSIDERATION

1. There is no international evidence that punishing and demeaning the poor and the vulnerable—and, in the case of the NT Intervention the ethnically different—through draconian measures such as income management makes a difference. This was a point I made to the Senate Committee considering the NTER legislation in August 2007. Indeed some commentators (such as Loic Wacquant in *Punishing the Poor*)⁷ make a persuasive case that the escalating rate of imprisonment of the poor and the black in the USA has been linked to so-called welfare reform influenced by neoliberalism and more extreme neoconservatism. It is instructive to consider the latest Australian Bureau of Statistics figures on Indigenous imprisonment rates in the last decade not obviously as a result of the policy reform now being proposed, but as a likely partial result of ongoing relative neglect during a period of unprecedented affluence in Australia.⁸
2. As I have argued elsewhere, the Closing the Gap policy framework is based on what eminent British political philosopher John Gray terms 'values monism', that is an expectation that the social norms of the mainstream society, which have become increasingly individualistic and materially acquisitive, can be applied universalistically.⁹ Such an approach, based on universalism and the ease of administration and governmentality of citizen subjects, might suit the state, but it ignores the plurality of values in Australian society, especially with respect to Indigenous Australians.

3. While I am not a supporter of the universalism generally espoused by the American political philosopher John Rawls, I do condone the early Rawlsian position that in making reform we should always consider whether we would find these reforms acceptable if we were born into the particular circumstances being assessed, in this case of an Indigenous person whose welfare support is to be 'managed' for their improvement? Would the approach proposed here be acceptable to the general population (many of whom expend income unwisely) rather than just being applied to those who are most deprived and most vulnerable?

I think that these sorts of broad philosophical considerations should guide policy-making in a liberal democratic society as well as the deliberations of this Committee.

ADDENDUM: OPENING STATEMENT TO SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Opening Statement by Professor Jon Altman to the Senate Standing Committee on Community Affairs Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009, at Parliament House Canberra, 26 February 2010 .

Thank you Senators, I realise that time is short and that this inquiry like so many others these days is being unduly rushed despite the complexity of the issues on hand.

I will just focus on the issue of income quarantining that I opposed in August 2007 in a submission to the Senate Legal and Constitutional Affairs Committee and still do.¹⁰ Many of my concerns expressed then have come to fruition, although I have also been very wrong in my suggestion that whichever government came into power in late 2007 would walk away from these expensive, paternalistic and racially-based measures. In fact neither the Rudd Government nor the Liberal/National Party Opposition want to walk away from income management. Shadow Minister Kevin Andrews made it quite clear this week that the Opposition will oppose this Bill because it provides more discretion, it is not blanket enough! If this opposition is maintained, the Rudd government will find themselves stuck with laws that according to UN Special Rapporteur James Anaya (and others domestically) are discriminatory and contravene international human rights standards.¹¹

How has such a situation come about? On one hand, it seems to me that there has been an all-too-ready willingness by the Australian state to sheet home responsibility for Indigenous community dysfunction to the behaviour of individuals, conveniently overlooking structural issues, while simultaneously making unprecedented commitments mainly targeted at 29 remote communities assessed to be in special need. There is too much focus, in my view, on controlling maladapted Aboriginal subjects and still not enough on the structural causes of disadvantage.

On the other hand, and this is very clear in Kevin Andrews's speech there is a heavy reliance on highly contested anthropological notions (from a book by Peter Sutton, *The Politics of Suffering*) like 'demand sharing' and 'humbugging' that are poorly understood by politicians and bureaucrats.¹² So a part of the problem is not just Aboriginal agency, but Aboriginal tradition that needs to be extinguished, without any understanding of the positives, as well as the negatives, of such social institutions.

In truth, policy and supporting laws should be made on the basis of cogent argument and empirical evidence. Neither are evident in this case. On the cogent argument side, there has never been any explanation provided why 50% of income should be quarantined and why these measures should be applied to all, administrative ease aside. The lack of cogency makes proposed amendments vulnerable to spurious questions such as why should income management laws now exclude some groups like the aged or the infirm, who are most vulnerable to the horrors of so called 'humbugging'?

On empirical evidence, governments that are committed to evidence-based policy making seem to have passed the laws and then searched for the justifying evidence. Unfortunately and sadly, no empirical evidence with any integrity has emerged to unequivocally support income management measures, that collected by AIHW has been highly qualified and equivocal. That collected by the Australian Government or its agents has been inhouse, unreviewed and frankly a little amateur. At best it has been deeply conflicted by moral hazard: agents of the state are asked by state employees or their paid consultants if state measures are effective!

Worryingly, the evidence might change over time. For example, there is forthcoming research from the Menzies School of Health Research suggesting that outcomes from income management might be at best ineffective, at worst perverse.¹³ If this is true, what will the Government and Opposition do? Admit error? Compensate those whose incomes were wrongfully quarantined? The Australian state cannot make policy and then seek evidence to trumpet its purported success; this is not evidence-based policy making, but ideologically-driven policy making.

I make three recommendations:

1. When making policy, even in highly emotive difficult circumstances do some proper research first; do not do the research ex post facto when far too much is politically at stake.
2. The government of the day could make the bold decision to administratively un prescribe communities and provide opt-in income management options. I believe that for many, a BasicsCard provides a handy form of debit card in situations where banking options are often very limited.
3. Focus on the hard structural issues where there is evidence that effort *does* generate socioeconomic benefit: for example the delivery of housing and infrastructure or better health services. It is too easy for the state to target vulnerable individuals.

To conclude, I try and broaden the somewhat circular debate beyond its Australian insularity and note:

1. There is no compelling evidence from elsewhere that income management actually works to discipline the expenditure behaviour of the welfare dependent in a manner that alters social norms and makes a difference; there are suggestions that this is occurring on Cape York but the trial programs there have a high degree of community involvement and an absence of blanket measures.
2. It is important to examine the underlying philosophy behind income management. It was initially intended to reduce child abuse, and is now intended to normalise or mainstream the social norms of remote living Aboriginal welfare recipients. This aim is clearly spelt out in the COAG National Indigenous Reform Agreement as a set of principles.
3. Finally, we should put ourselves in the circumstances of someone who, for example, has been retrenched and overnight moves from being categorised as 'responsible' to being categorised as 'irresponsible' and in need of income management. Rigorously applying the principle of horizontal equity—the like treatment of like citizens that is at the heart of our social democratic welfare system—would have precluded us getting to where we are now.

NOTES

1. See <http://www.aph.gov.au/senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/index.htm>.
2. See <http://www.aph.gov.au/senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/tor.htm>.
3. See <http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/policy_statement_nter/Pages/default.aspx>.
4. Jon Altman, 'Measuring what matters', *The Australia Institute News*, Vol. 60, December 2009, p. 4.
5. Jon Altman, 'Opening comments to Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Provisions of the Northern Territory Emergency Response Bill 2007 and Associated Bills', *CAEPR Topical Issue No. 13/2007*, available at <<http://www.anu.edu.au/caepr/Publications/topical/2007TI13.php>>.
6. See my initial assessment, 'After the NT intervention: violence up, malnutrition up, truancy up', Crikey, 9 November 2009, available at <<http://www.crikey.com.au/2009/11/09/after-the-nt-intervention-violence-up-malnutrition-up-truancy-up/>>.
7. Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity*, Duke University Press, Durham, 2009.
8. Australian Bureau of Statistics (ABS), *Prisoners in Australia*, cat. no. 4517.0, ABS, Canberra, 2008.
9. Jon Altman, 'Beyond Closing the Gap: Valuing diversity in Indigenous Australia', *CAEPR Working Paper No. 54/2009*, ANU, Canberra, available at <<http://www.anu.edu.au/caepr/Publications/WP/2009WP54.php>>.
10. See Note 5.
11. 'UN human rights envoy James Anaya: NT intervention is racist', *The Australian*, 28 August 2009, available at <<http://www.theaustralian.com.au/news/un-human-rights-envoy-james-anaya-nt-intervention-is-racist/story-e6frg6n6-1225767082240>>.
12. Peter Sutton, *The Politics of Suffering: Indigenous Australia and the End of the Liberal Consensus*, Melbourne University Press, Melbourne, 2009.
13. The research was published On 17 May 2010. Julie K Brimblecombe, Joseph McDonnell, Adam Barnes, Joanne Garnggulkpuy Dhurrkay, David P Thomas and Ross S Bailie, 'Impact of income management on store sales in the Northern Territory', *Medical Journal of Australia*, 192 (10): 549-54. See <<http://www.menzies.edu.au/research/research-news/welfare-quarantining-may-not-lead-healthier-purchases-indigenous-community-st>>.